IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL RESTORATION No. 23 of 2006

DINENDRA KUMAR
V/S
NAVRATAN MAL

Mr. RAJESH JOSHI for Mr. K N JOSHI, for the appellant / petitioner

Date of Order : 25.4.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

This restoration application has been filed for restoration of the appeal, that had been dismissed in terms of the peremptory order, passed on 27.10.2005.

All that is alleged in the restoration application is, that the matter was listed before the Court on 22.2.2005, and six weeks' time was granted to remove the defects. It is then alleged, that counsel for the appellant noted the defect i.e. List of documents was not filed, and the matter was again listed in the Court on 27.10.2005, and four weeks' time was granted, making the order peremptory. It is then alleged, that since counsel for the appellant had earlier noticed only one defect, i.e. list of documents not filed, as such, list of documents was filed, but

initial charges were not deposited. As such the appeal has been dismissed. Then, the judgment of Hon'ble the Supreme Court, in Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh, reported in (2006) 1 SCC-75, has been referred to contend, that non-compliance of any procedural requirement relating to a pleading, memorandum of appeal, or application, or petition for relief, should not entail automatic dismissal, unless the relevant statute or rule so mandates.

A perusal of the file of the appeal shows, that after admission of the appeal, and confirmation of stay, the record of the trial court was requisitioned, which was received on 21.5.2004, and the notice of the receipt of the record was exhibited in the month of May, 2004 itself. According to Rule 182 of the Rules of the High Court of Judicature for Rajasthan, 1952, hereafter to be referred to as the rules, time is prescribed for making of an application for paper book, and according to Clause (a) thirty days time has been prescribed, from the date, when notice of the receipt of record is first published in the Day's List or exhibited on the notice board. Then, according to proviso, where no application for paper book has been made within the prescribed time, the Registrar may, on an application made in this behalf, if satisfied by affidavit or otherwise, that an application for paper book could not be made within the prescribed time, grant further time for making of such application. Then, according to

Rule 183, the appellant is to apply for the copying and typing of necessary papers, within the prescribed time, and according to Rule 184, **if the appellant fails to make an application, as required by Rule 183(1), the appeal is to be listed in the Court for dismissal, and is to be dismissed, unless on an application in writing made in this behalf, the Court for sufficient cause shown grants further time for making of such application.**

In this background, despite publication of the notice in the month of May, 2004, necessary applications were not filed, and the matter was listed before the Registrar, at least on four occasions, and nobody appeared on behalf of the appellant, much less filed any application, as contemplated by Rule 182 or 183. It is in that sequence, that the matter came up in the Court on 22.2.2005, and that day also nobody appeared on behalf of the appellant. In that view of the matter, in view of clear language of Rule 184, the appeal was required to be dismissed on 22.2.2005 itself. However, respecting the sentiments, time and again expressed by Hon'ble the Supreme Court, on the consideration of requirement of justice oriented approach, notwithstanding the fact that nobody appeared on behalf of the appellant, the appellant was granted six weeks' time, still needful was not done, and the matter came to be listed in the Court again on 27.10.2005, and on that day again, neither anybody appeared

nor any application as required by Rule 184(1) was at all filed. In that event, the appeal could very well be, and rather was required to be dismissed on 27.10.2005, under Rule 184, so also for non-appearance, but again bearing benevolence, even going to the extent of interaction of Rule 184, four weeks' further time was granted, making order peremptory. In this background significantly in the entire application, not a word has been said, as to why appearance was not put in the Court on 22.2.2005, or 27.10.2005, or for not taking steps, as required by Rule 182, 183, and 184.

In that view of the matter, I do not find any force in the restoration application. The same is, therefore, dismissed.

(N P GUPTA),J.

/Sushil/